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Annex to the letter dated 7 June 2006 from the Permanent Representative of Denmark to the United Nations addressed to the Secretary-General

Strengthening international law: rule of law and the maintenance of international peace and security

Discussion paper for the open debate in the Security Council on 22 June 2006 under Denmark's presidency

At the World Summit in September 2005, heads of State and Government reaffirmed their commitment to the purposes and principles of the Charter of the United Nations and international law as indispensable foundations of a more peaceful, prosperous and just world.

Recognizing the important role of the General Assembly in the progressive development of international law, the objective of the thematic debate is to consider the Security Council's particular role in promoting international law. The debate provides a platform for an open and frank discussion of the legal tools applied by the Security Council in its endeavours to maintain international peace and security. The Danish Minister for Foreign Affairs, Per Stig Møller, will preside over the open debate, which should serve to identify current challenges and opportunities for the Council in promoting the international legal order.

The Security Council operates within the framework of international law in all its functions. In pursuance of the purposes and principles of the Charter, the Council, *inter alia*, has the authority to promote the peaceful settlement of disputes and, in accordance with the Charter, to take steps to ensure compliance with international law.

The Security Council has continuously developed and expanded its approach to maintaining international peace and security in the light of changing global threats and challenges. In the course of the last decade, the Council has increasingly resorted to legal mechanisms in fulfilling its responsibilities. It has established border commissions and compensation mechanisms. Significantly, it has taken a leadership role in establishing international criminal tribunals, actively supported other institutions of criminal justice and insisted that those committing grave violations of international humanitarian law be brought to justice. In the fight against terrorism, the Council has put significant emphasis on the international legal framework. It has moved the focus of its sanctions from States to individuals and other non-State actors, hence focusing more and more on the role and accountability of individuals. And the Council has reaffirmed its role in the peaceful settlement of disputes and called on States to settle their disputes by peaceful means, including through the International Court of Justice. It has thus already made a significant contribution to the strengthening of an international order based on legal principles. In addition, the Council has steadily increased its focus on rule-of-law issues in conflict and post-conflict situations, in specific country situations and thematically.

Among the issues discussed in this context have been, on the one hand, an innovative approach to utilizing the Security Council's powers under the Charter and, on the other, the legitimacy and efficiency of the Council's endeavours to maintain international peace and security.

Below we have outlined three specific and to some degree overlapping issues that we believe could merit special attention.

1. The promotion of rule of law in conflict and post-conflict situations

Addressing the causes of armed conflict in a comprehensive manner on a long-term basis is part and parcel of preventing the reoccurrence of armed conflict. Central in this effort is the promotion of the rule of law and transitional justice. In October 2004, the Security Council last had the opportunity to discuss rule of law in conflict and post-conflict societies and, building on the recommendations of the Secretary-General, pointed to the need to take this issue further (S/PRST/2004/34). We hope that the debate will help generate new momentum on this issue. The Peacebuilding Commission has a central role to play. In developing the working relations between the Peacebuilding Commission and the Security Council, the enhancement of rule-of-law activities will be an important aspect that includes ensuring the institutional capacity within the United Nations.

How do we ensure that the promotion of justice and rule of law, including respect for human rights, is fully integrated into the work of the Security Council, more specifically in the context of United Nations peacekeeping operations? How should the Council approach developing a policy on what United Nations peacekeeping missions could do in cases of rule-of-law vacuums, including on the need for United Nations forces to take on detention powers? What role could the Peacebuilding Commission play in advising the Council on rule-of-law issues? How can we best ensure sufficient capacity within the United Nations?

2. Ending impunity for international crimes

An essential element in the Security Council's approach to promoting the rule of law, including human rights, at both the national and international levels, is to engage in a concerted effort to end impunity. Impunity violates the fundamental principle of justice and can — if accepted or ignored — aggravate a situation to the extent that it constitutes a threat to peace and security in the affected country and region.

How can the Security Council encourage and support States to bring the perpetrators of international crimes and widespread and systematic human rights violations to justice? Which strategy should the Council pursue in rule-of-law vacuums (i.e. where criminal justice systems have collapsed)? How can the Council ensure sufficient interplay with and support for transitional justice mechanisms, the International Criminal Court and other courts and tribunals, vetting mechanisms and truth and reconciliation processes?

3. Enhancing the efficiency and credibility of United Nations sanctions regimes

In the past decade the Security Council has increasingly used sanctions as a tool in conflict management and to promote compliance with international law. Sanctions have become an indispensable element in the fight against terrorism and increasingly been targeted against individuals and other non-State actors. Targeting decision makers — or members of terrorist groups — has increased the efficiency of sanctions. It has, however, also raised a number of fundamental legal questions. In particular, discussions have focused on the need to establish adequate delisting mechanisms to address situations in which individuals or entities for one reason or

another should be removed from the sanctions lists. In addition, a number of ideas relating also to the listing process could have a significant impact on the effectiveness of the sanctions.

Improved due process guarantees will enhance the credibility of the sanctions regimes. And as sanctions which are seen as credible are more likely to be implemented, credibility will in turn enhance the efficiency of sanctions regimes.

In the public debate, the lack of adequate delisting procedures is seen as especially problematic with regard to measures to fight international terrorism. The Security Council has repeatedly stated that, while combating acts of terrorism by all means, the fight against terrorism must take place within the established framework of international law, in particular international human rights, refugee and humanitarian law. While there seems to be broad support for this principle, its more practical application is still under development.

How can the Security Council further develop its delisting procedures in order to enhance the credibility and efficiency of United Nations sanctions regimes? Which other improvements — procedural or otherwise — could add to the efficiency of the sanctions? What more can the Council do to ensure that human rights are protected in the fight against terrorism?